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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,028

02/17/2004

Paul E. Furner

J-3705

9273

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7590

04/11/2006

S.C. JOHNSON & SON, INC.
1525 HOWE STREET
RACINE, WI 53403-2236

EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/780,028	FURNER, PAUL E.	
	Examiner	Art Unit	
	Josiah Cocks	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25,27,28 and 40-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25,27,28 and 40-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/24/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 1/24/2006 is acknowledged.

Information Disclosure Statement

2. The information disclosure statement filed 1/24/2006 is acknowledged.

The references cited by applicants in the information disclosure statements filed 5/14/2004, 4/27/2005, 9/29/2005, 1/24/2006 have been made of record. The examiner has considered the voluminous references to the best of his ability.

While the statements filed do not comply with the guidelines set forth in MPEP 2004 regarding both the number of references cited and the elimination of clearly irrelevant art and marginally cumulative information, compliance with these guidelines is not mandatory. Furthermore, 37 CFR 1.97 and 1.98 does not require that the information be material; rather, they allow for submission of information regardless of its pertinence to the claimed invention. Also, there is no requirement to explain the materiality of the submitted references. However, the cloaking of a clearly relevant reference by inclusion in a long list of citations may not comply with Applicant's duty of disclosure. See Penn Yan Boats, Inc. v. Sea Lark boats Inc., 359 F. Supp. 948, *aff'd* 479 F. 2d. 1338.

Applicant is advised that the MPEP states the following with respect to large information disclosure statements:

Although a concise explanation of the relevance of information is not required for English language information, applicants are encouraged to provide

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a concise explanation of why the English-language information is being submitted. Concise explanations (especially those that point out the relevant pages and lines) are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability or where a large number of documents are submitted and applicant is aware that one or more is highly relevant to patentability. MPEP § 609.04(a)(III).

This statement is in accord with dicta from *Molins PLC v. Textron, Inc.*, 48 F.3d 1172 (Fed. Cir. 1995), states that forcing the Examiner to find “a needle in a haystack” is “probative of bad faith.” *Id.* at 1888. This case presented a situation where the disclosure was in excess of 700 pages and contained more than fifty references. *Id.* 1888.

The MPEP provides more support for this position. In a subsection entitled “Aids to Compliance With Duty of Disclosure,” item thirteen states:

It is desirable to avoid the submission of long lists of documents if it can be avoided. Eliminate clearly irrelevant information and marginally pertinent cumulative information. If a long list is submitted, highlight those documents which have been specifically brought to Applicant's attention and/or are known to be of the most significance. See Penn Yan Boats, Inc. v. Sea Lark Boats, Inc., 359 F.Supp 948 (S.D. Fla. 1972) aff'd 479 F.2d 1338 (5th Cir 1974). See also MPEP § 2004.

Therefore, it is recommended that if any information that has been cited by applicant in the previous disclosure statement is known to be material for patentability as defined by 37 CFR 1.56, applicant should present a concise statement as to the relevance of that/those particular documents therein cited.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 7, 9, 20, 21, 23, 25, 28, and 40-49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0166863 to Wright et al. (“Wright”).

Wright discloses in the specification and Figures 1-8 an invention in the same field of endeavor as applicant’s invention and as described in applicant’s claims 1, 2, 7, 9, 20, 21, 23, 25, 28, and 40-49. In particular, Wright shows a candle comprising a meltable solid fuel element (28), a melting plate/support plate (32) upon which the fuel element rests, and a raised lobe (e.g. 50 or 50c) that is considered to be a capillary lobe that rests on the melting plate (see at least Fig. 4). The lobe/dome (50c) cooperatively engages a base portion of a wick holder (25). Though it is not entirely clear from the figures if there is a gap between the lobe and the base portion, Wright recites the following in the beginning of paragraph [0057]:

“When the candle is burned, the wax moves up the wick by capillary action to fuel the flames as is conventional....At some point, before the pool is depleted, the pool will fall below the upper edge of the lip surrounding the dish shaped depression, and no further wax will be fed to the wick...” (see Wright, paragraph [0057]).

The stated depression is portion (27, e.g. Figs. 1-4) and the lip is the surrounding sidewall (41) (see page 5, paragraph [0045]). Accordingly, as the wick will continue to burn when the level of the fuel is below the top of wick holder (25) but above the sidewall (41), then this wick must necessarily receive wax from a gap between the base of the wick holder (25) and the top surface (40) of the lobe (e.g. at least 50 or 50c).

In regard to at least claims 2, 21, and 47, the fuel is a burnable wax, which is a fuel element of volatile active material.

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In regard to at least claims 7 and 23, the examiner considers that the candle would rapidly burn out if the wick holder is not engaged with the lobe (e.g. 50c) and is therefore “configured” to achieve this end as recited.

In regard to at least claims 25 and 41, see at least line 7 of the Abstract describing a distance from the bottom support plate as .025 inches.

In regard to at least claims 42 and 45, the term skirt is not considered to structurally define over the base portion of wick holder (25). Further, the gap that is considered to be formed (see above) between the wick holder and the lobe/dome (50) is considered to be “around” the lobe and “fit closely” over the lobe as recited.

In regard to at least claim 43, the support plate and lobe are metal (see at least p. 4, paragraph [0040]).

In regard to at least claim 46, note Figs. 2 and 4 and recesses (either 53, or the recess formed by sidewalls 41).

In regard to at least claim 48, the gap of Wright is considered disposed as recited.

In regard to at least claim 49, the support plate of Wright is shaped as recited.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 8, 13, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright as applied above in view of U.S. Patent No. 3,689,616 to Kelley (“Kelley”).

Wright discloses all the limitations of claims 8, 13, 50, and 51 except possibly that the melting plate is treated to be self-cleaning or that a coating of a layer polytetrafluoroethylene is applied.

Kelley teaches a process of forming candles and describes that ,for the purpose of preventing wax from adhering to a portions of a candle mold, a layer or coating of teflon may be applied to components of the mold (see col. 3, lines 29-37). The term “teflon” is understood to be a trade name for polytetrafluoroethylene (see MPEP Appendix I). This layer functions to make the wax non adhere to coated component and is therefore considered to be “self-cleaning” as recited. A person of ordinary skill in the art would consider the problem of preventing wax adherence to a candle mold to be analogous to the problem of preventing wax adherence to structures in a candle container.

Therefore, in regard to claims 8, 13, 50, and 51, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the melting plate of Wright to include a coating as recited in Kelley for the desirable purpose of preventing wax adherence to portions of a candle apparatus (see Kelley, col. 3, lines 29-37).

7. Claims 3, 4, 6, 10-12, 14-16, 18, 24, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright as applied to the claims above in view of U.S. Patent No. 3,910,753 to Lee (“Lee”) (cited by applicant).

Wright teaches all the limitations of claims 3, 4, 6, 10-12, 14-16, 18, 24, and 27 except possibly for a heat conductive fin on the wick holder and that the fuel element is replaceable.

Lee teaches a candle in the same field of endeavor as applicant's invention and Wright. In particular, Lee shows a candle having a support base (11) and a wick holder (H, with body 17). The wick holder supports the wick (W) and includes flow channels (20) that allows for wax melted by the holder (body 17, including lower flange 19) to pass through the channels by capillary action to reach the wick (see col. 3, line 56 through col. 4, line 2). The wick holder (17) further includes an upper flange portion (18) that, along with lower flange (19) form heat conductive fins and raised heat conductive portions (see col. 3, lines 44-55).

In regard to the recitation in the claims of a replaceable fuel element, Lee makes clear that it is understood in the art additional wax may be supplied to candle assemblies (i.e. that of both Lee and Wright) in order to replenish consumed wax (see col. 5, lines 1-6). A person of ordinary skill in the would therefore consider the wax added in Wright to also be capable of being replenished and is therefore properly considered replaceable in order to desirably replenish/replace wax consumed by the flame produced by the wick.

Therefore, in regard to claims 3, 4, 6, 10-12, 14-16, 18, 24, and 27, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the candle of Wright to incorporate the wick holder structure of Lee to desirably form a wick holder that operates in conjunction with a lower support plate to desirably cause the wick holder to melt the surrounding wax in order to render it fluid so that it may be conducted to the wick to support a flame (see Lee, col. 2, lines 3-16).

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8. Claims 5, 17, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright and Lee as applied to claims 4, 14, and 21 above and further in view of U.S. Patent No. 3,730,674 to Gross ("Gross").

Wright and Lee teach all the limitations of claims 5, 17, and 22 except for a starter bump on the top surface.

Gross teaches a candle in the same field of endeavor as applicant's invention and Wright. In Gross, a wick (14) lies within a well (18). Gross also identifies that the surface through which the wick extends may be varied as desired (see col. 3, lines 41-45). The sides of this well function to form raised portions that are considered to constitute the starter bump as claimed. The raised side wells of this well provide for quick pooling of wax around the wick that aids in combustion (see col. 3, lines 24-45).

Therefore, in regard to claims 5, 17, and 22, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the candle of Wright to incorporate the well side wall/bump portions of Gross to desirably promote wax pooling around the wick end during burning of the wick (see Gross, col. 3, lines 24-45).

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright as applied above in view of U.S. Patent No. 3,689,616 to Kelley ("Kelley").

Wright discloses all the limitations of claim 19 except possibly that the melting plate is treated to be self-cleaning.

Kelley teaches a process of forming candles and describes that, for the purpose of preventing wax from adhering to a portions of a candle mold, a layer or coating of teflon may be

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applied to components of the mold (see col. 3, lines 29-37). This layer functions to make the wax non adhere to coated component and is therefore considered to be “self-cleaning” as recited. A person of ordinary skill in the art would consider the problem of preventing wax adherence to a candle mold to be analogous to the problem of preventing wax adherence to structures in a candle container.

Therefore, in regard to claims 8, 13, 50, and 51, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the melting plate of Wright to include a “self-cleaning” coating as recited in Kelley for the desirable purpose of preventing wax adherence to portions of a candle apparatus (see Kelley, col. 3, lines 29-37).

Response to Arguments

10. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

However, in regard to applicant's arguments concerning Gross, applicant argues that Gross does not disclose a starter bump as claimed. As noted above, the examiner has likened the sides of the well of Gross to applicant's starter bump. The examiner notes that the sides of this well function for the same purpose as applicant's starter bump in providing a source of fuel to aid in initial combustion of the wick. Further, this sidewall is raised above the base of the wick and is reasonably considered a bump as recited.

Accordingly, applicant's claims are not considered to patentably distinguish over the prior art of record.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

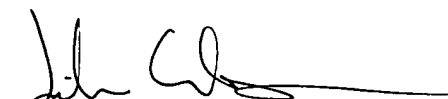
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jcc
April 6, 2006



JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749